

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALEXANDER L. STEVENS
CLERK

GERALD D. BAIR, DIRECTOR OF REVENUE OF THE IOWA DEPARTMENT OF REVENUE; IOWA DEPARTMENT OF REVENUE; IOWA RAILWAY FINANCE AUTHORITY; MAURICE E. BARINGER, TREASURER OF IOWA AND CUSTODIAN OF THE SPECIAL RAILROAD FACILITY FUND; RAYMOND L. KASSEL, DIRECTOR OF TRANSPORTATION OF THE STATE DEPARTMENT OF TRANSPORTATION; STATE TRANSPORTATION COMMISSION OF THE STATE DEPARTMENT OF TRANSPORTATION; AND STATE DEPARTMENT OF TRANSPORTATION.

Petitioners,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; BURLINGTON NORTHERN RAILROAD COMPANY; CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY; ILLINOIS CENTRAL GULF RAILROAD COMPANY; NORFOLK AND WESTERN RAILROAD COMPANY; RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR; and UNION PACIFIC RAILROAD COMPANY,

Respondents,

IOWA RAIL SHIPPERS ASSOCIATION,

Intervenor-Respondent.

*On Petition For Writ of Certiorari
to the Supreme Court of Iowa*

BRIEF OF RESPONDENTS IN OPPOSITION
TO PETITION FOR CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Congress, in Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (now codified as 49 U.S.C. § 11503), prohibited any State from engaging in discriminatory taxation of property owned by an interstate railroad or from imposing any other tax which results in discriminatory treatment of an interstate railroad, declaring any such action to constitute an undue burden on interstate commerce. In 1981, the Iowa General Assembly enacted a special excise tax on railroads measured by the amount of fuel consumed to propel railway vehicles in Iowa. 1981 Iowa Acts ch.3, § 29. On the basis of its analysis of the Iowa tax structure as applied to the taxation of the consumption of fuel by railroads and other modes of transportation, the Supreme Court of Iowa determined that the Iowa railroad fuel tax resulted in discriminatory treatment by Iowa of Respondent railroads and therefore was in violation of, and prohibited by, 49 U.S.C. § 11503.

The question presented for review is:

Whether the Supreme Court of Iowa correctly decided that the Iowa railroad fuel consumption tax would result in discriminatory treatment of interstate railroads and therefore is prohibited by 49 U.S.C. § 11503(b)(4).

LIST OF PARTIES TO THIS PROCEEDING

Respondents are listed in the caption. The parents, subsidiaries (other than wholly-owned subsidiaries) and affiliates of Respondents are numerous and are listed in Appendix I.

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OPINION BELOW

The opinion of the Supreme Court of Iowa is reported at *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W. 2d 338 (Iowa 1983). (See App. 1-27.)¹

¹ "App." refers to the Appendix to the Petition for Certiorari. "Petition" refers to the Petition for Certiorari.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law No. 94-210, 90 Stat. 54 (1976), now codified as 49 U.S.C. § 11503(b)(4),² are as follows:

Section 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28 as follows:

Sec. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

* * * *

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

² Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 was codified in Public Law 95-473, 92 Stat. 1337 (October 13, 1978), as 49 U.S.C. Section 11503(b). While the language of Section 306 and the codified version thereof in Section 11503(b) are somewhat different, the codification was enacted merely to revise, codify and enact without substantive change the Interstate Commerce Act and related laws. See *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036, 1037 (11th Cir. 1981). Reference in this Brief will be made to Section 306.

The relevant provisions of Iowa Code § 324A.3 (1983) are as follows:

324A.3 Tax imposed. For the privilege of operating railway vehicles in this state, an excise tax is imposed at the rate of three cents per gallon beginning October 1, 1981 and is imposed at the rate of eight cents per gallon beginning July 1, 1982 upon the use of fuel for the propulsion of a railway vehicle within the state. . . .

STATEMENT OF THE CASE

Background of the Case

This action involves a request for declaratory and injunctive relief by the interstate railroads which presently operate in Iowa, seeking to have the special excise tax imposed on railroad companies under Iowa Code §§ 324A.1-9 (1983) declared unlawful as being prohibited by Section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act").

Congress enacted the 4-R Act in 1976 in response to the deteriorating financial condition of the interstate railroads. Among the provisions designed to competitively and economically assist the railroads, Section 306 of the 4-R Act dealt with the problem of discriminatory state taxation of railroads. In Section 306, Congress declared it to be an unreasonable and unjust discrimination against, and undue burden on, interstate commerce for any State to tax railroad property in a discriminatory manner or to impose any other tax which results in discriminatory treatment of an interstate railroad.

In 1981, the State of Iowa enacted a special excise tax on railroads measured by the amount of diesel fuel consumed to propel railway vehicles in Iowa. Revenue from the tax was to be placed in a special railroad facility fund which was to be used to purchase or rehabilitate abandoned or

uneconomic railroad lines in Iowa and to place such lines back into competition with the taxed railroads. The special excise tax was imposed solely upon railroads and no identical or comparable fuel consumption tax is imposed by Iowa upon any other commercial or industrial taxpayer in Iowa, including taxpayers engaged in the business of conducting competing transportation services, such as trucks, barges and airlines.

United States District Court Proceedings

Confronted with the proposed implementation of the special excise tax on railroads, the Respondent railroads filed a complaint on September 22, 1981, in the United States District Court for the Southern District of Iowa seeking declaratory and injunctive relief on the alternative grounds that the tax was prohibited by Section 306 of the 4-R Act and also violated a variety of federal and Iowa constitutional provisions.

The Petitioners moved to dismiss such federal court action on the ground that such action was precluded by the federal Tax Anti-Injunction Act, 28 U.S.C. § 1341. The railroads contended that 28 U.S.C. § 1341 was not a bar to this action in the federal court by reason of the exception to Section 1341 carved out by Section 306(c) of the 4-R Act, which essentially provides that, notwithstanding Section 1341 of Title 28, a United States District Court has jurisdiction to prevent a violation of Section 306. The Petitioners countered by contending that Section 306 did not apply to the special excise tax in question because, in their view, Section 306 was limited to discriminatory *property taxation*, notwithstanding the provisions of Section 306(1)(d) which prohibit the imposition of *any other tax* which results in discriminatory treatment of interstate railroad carriers.

The United States District Court, on the authority of *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981), held that the phrase "any other tax" contained in Section 306(1)(d) prohibits all forms of state taxation which result in discriminatory treatment of railroads and the provisions of Section 306 were not merely limited to discriminatory property taxes. Accordingly, the United States District Court denied the Petitioners' Motion to Dismiss and retained jurisdiction over the case, although, for the reasons described below, the District Court deferred further consideration of the case. *See Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 535 F. Supp 68 (S.D. Iowa 1982).

Iowa District Court Decision

Confronted with the Petitioners' Motion to Dismiss based on the federal Tax Anti-Injunction Act, the Respondent railroads commenced an action in the Iowa District Court for Polk County on November 6, 1981, similarly seeking declaratory and injunctive relief to have the special Iowa excise tax on railroads declared unlawful under Section 306 of the 4-R Act and on a variety of other grounds based upon the United States and Iowa Constitutions. (App. 30-31, 39-40.) The Iowa District Court, on December 23, 1981, granted a temporary injunction against imposition of the tax. (App. 31-32.) On September 8, 1982, the Iowa District Court ruled that Section 306 of the 4-R Act was applicable to non-property taxes such as the Iowa excise tax on railroads (App. 48) but that, on the basis of its analysis of the Iowa and federal tax systems, such tax did not result in discriminatory treatment of railroads. (App. 48-59.) The Iowa District Court also rejected the railroads' constitutional arguments. (App. 59-103).⁸ The injunction was continued in force pending appeal.

⁸ The Iowa District Court decision is printed in full at App. 90-110.

Iowa Supreme Court Decision

The railroads perfected a timely appeal to the Supreme Court of Iowa, which, on September 21, 1983, reversed the decision of the Iowa District Court.

The Iowa Supreme Court, on the basis of its analysis of Section 306 of the 4-R Act and of the taxing structure of the State of Iowa, concluded that the Iowa special excise tax on railroads violated Section 306(1)(d) of the 4-R Act and was therefore invalid. (App. 20.)⁴ The Iowa Supreme Court first rejected the Petitioners' contention that Section 306(1)(d) was limited in its scope to the prohibition of discriminatory property taxation and ruled that Section 306(1)(d) applied to discriminatory state excise taxes as well. (App. 10-15.) The Court then held that, in order to determine whether discrimination exists under Section 306(1)(d), it was necessary, in the context of a tax on the use of fuel to propel railway vehicles, to compare such Iowa taxation of railroads with the taxation by Iowa of the use of fuel by competing modes of transportation. (App. 15-16.) The Iowa Supreme Court also concluded that, in making such comparison, it was erroneous to consider the entire tax structure of the State of Iowa or to consider the impact of federal taxation on railroads and other modes of transportation. (App. 16.) The focus was therefore on the specific tax at issue and on other Iowa taxes comparable to it. The Iowa Supreme Court then analyzed the Iowa tax statutes which apply—or do not apply—to fuel consumed within the State of Iowa by the various competing modes of transportation. Based on such analysis of its own state tax statutes, the Iowa Supreme Court concluded that the Iowa railroad fuel consumption tax resulted in discriminatory treatment of railroads and therefore was prohibited by Section 306(1)(d) of the 4-R Act. (App. 16-20.)

⁴ Under Iowa procedural rules, the Iowa Supreme Court's review of all questions of fact and law in this case was *de novo*. Iowa R. Civ. P. 4.

REASONS FOR DENYING THE WRIT

This case does not present any of the relevant considerations governing review on certiorari as set forth in this Court's Rule 17. The decision of the Iowa Supreme Court does not conflict with any decision of any other state court of last resort or of any federal court of appeals. Indeed, the Iowa excise tax on railroad fuel consumption stands alone; no other state has enacted any similar tax and no other court has been required to rule upon the validity of any similar excise tax under Section 306(1)(d). Moreover, to the extent the federal courts have dealt with any of the subsidiary issues presented in this case involving Section 306, the decision of the Iowa Supreme Court is wholly consistent with such decisions.

Nor does the decision below merit review by this Court for any other reason. This case merely involves the determination by the Iowa Supreme Court that a unique state excise tax on the use of diesel fuel by railroads results in discriminatory treatment of railroads under Section 306(1)(d) when such tax is viewed within the context of the relevant Iowa tax structure. Such issue does not involve an important question of federal law of broad impact.

I. The Decision of the Iowa Supreme Court Correctly Construes and Applies Section 306(1)(d) of the 4-R Act and Does Not Conflict with Any Decision of This Court or of Any Court of Appeals or Other State Supreme Court.

The Iowa Supreme Court in this case was confronted with the narrow question of whether a unique state excise tax on railroads, considered in the context of Iowa's specific tax structure, resulted in discriminatory treatment of such railroads and was therefore prohibited by Section 306(1)(d) of the 4-R Act. In addressing this issue, the Iowa Supreme Court first considered, and properly rejected, the argument raised by the Petitioners that Section 306 was limited to

the prohibition of discriminatory state property taxes and did not encompass other forms of discriminatory state taxes, including state excise taxes. (App. 10-15.) Section 306(1)(d) clearly and unambiguously prohibits the imposition of "any other tax" which results in discriminatory treatment of an interstate rail carrier, and the Iowa Supreme Court held that such clear and unambiguous language means precisely what it says, i.e., that *any* form of discriminatory state taxation is governed by Section 306, by virtue of the provisions of Section 306(1)(d). As the Iowa Supreme Court correctly stated (App. 13), there is no uncertainty in the clear and unambiguous words "any other tax". The Iowa Supreme Court decision is based upon and fully supported by *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981), *on remand*, 541 F. Supp. 1084 (M.D. Ala. 1982); *Ogilvie v. State Board of Equalization*, 492 F. Supp. 446 (D.N.D. 1980), *aff'd*, 657 F.2d 204 (8th Cir.) *cert. denied*, 454 U.S. 1086 (1981); and *Trailer Train Co. v. State Board of Equalization*, 710 F.2d 468, 472, n. 6 (8th Cir. 1983). The Iowa Supreme Court's statutory interpretation is also fully consistent with this Court's decision in *Gordon v. Appeal Tax Court*, 44 U.S. (3 How.) 133 (1845).

Moreover, the decision by the Iowa Supreme Court (and by each of the federal courts which have addressed this question) as to the scope of Section 306(1)(d) is eminently sensible and correct. Congress, in enacting Section 306 of the 4-R Act, was concerned with the impact upon the economic viability of the interstate railroad system of discriminatory state taxation of railroads, and Congress was obviously aware that discriminatory treatment need not be limited to property taxation, but could also be effected by a variety of other forms of discriminatory state taxation which might be enacted by imaginative state legislatures. Congress therefore added a broad "catch all" provision in Section 306, in the form of Section 306(1)(d), to the other more specific prohibitions against discriminatory property taxation.

The Petitioners essentially repeat their restrictive and unsupported view of Section 306 and seek to have this Court ignore the clear and unambiguous language of Section 306(1)(d). (Petition 5-7.) Petitioners have presented their limited construction of Section 306 at each level of the proceedings below, and that construction has been properly rejected by each court which has addressed it.⁵ In effect, Petitioners request this Court to ignore the elementary rule that, where statutory language is clear and unambiguous, it is unnecessary to look beyond the plain words of the statute. *Harrison v. PPG Industries, Inc.*, 446 U.S. 578 (1980); *Brotherhood of Trainmen v. Baltimore & Ohio R.R.*, 331 U.S. 519 (1947). And, as the Iowa Supreme Court (and every other court which has addressed this issue) stated (App. 13), there is no uncertainty in the clear and unambiguous words "any other tax" contained in Section 306(1)(d).

Petitioners also contend (Petition 6) that the Iowa Supreme Court's interpretation of Section 306(1)(d) ignores this Court's requirement that Congress enact a clear statement of its intent when a congressional enactment impinges on traditional state authority.⁶ However,

⁵ See *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 535 F. Supp. 68 (S.D. Iowa 1982); *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, (Iowa District Court of Polk County), decided September 8, 1982 (App. 46-48).

⁶ Petitioners cite *United States v. Bass*, 404 U.S. 336, 349 (1971); *Rewis v. United States*, 401 U.S. 808, 812 (1971); and *United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953). Petitioners' reliance upon such cases is wholly misplaced. Such cases involved the interpretation of federal criminal statutes and merely reflect the position of this Court that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis v. United States*, *supra*, at 812. Such cases represent no more than this Court's view regarding the "sensitive relation between Federal and state criminal jurisdiction." *United States v. Bass*, *supra*, at 349.

Section 306(1)(d) does express, in the clearest terms imaginable, the decision of Congress to limit state authority by prohibiting, as an undue burden on interstate commerce, the imposition of any discriminatory tax on interstate railroads.⁷

After determining that Section 306(1)(d) applies to state excise taxes, the Iowa Supreme Court then addressed the question of whether the specific Iowa excise tax at issue resulted in discriminatory treatment of the Respondent railroads. (App. 15.) The Iowa Supreme Court preliminarily and correctly held, on the basis of consistently decided federal authority⁸ that such determination should not be based on consideration of the treatment of railroads and other taxpayers under the entire tax structure of the State of Iowa. The Iowa Supreme Court also preliminarily and correctly held, on the basis of this Court's analysis in *Arizona Public Service Co. v. Snead*, 441 U.S. 141 (1979), that the discriminatory effect of state taxation of railroads

⁷ Petitioners also contend that the Iowa Supreme Court determined that Section 306(1)(d) evidenced a Congressional intent to "invade and overturn" state excise taxation of rail carriers, which Petitioners, citing *Greenough v. Tax Assessor*, 331 U.S. 436, 490 (1947), assert is an area of traditional state authority vital to the existence of the states. (Petition 5-6.) Petitioners' assertion wholly ignores the elementary principle, expressed in *Greenough*, at 490, that the states' power to tax is subject to restrictions which emerge from the federal Constitution. Congress, acting under its undisputed constitutional authority to prohibit burdens on interstate commerce, determined that discriminatory state taxation constituted such a burden and therefore enacted Section 306, and the Iowa Supreme Court correctly decided that this was the clear intent and purpose of Congress. In this regard, Respondents note that Petitioners do not purport to challenge the constitutional validity of the Congressional prohibition against discriminatory state taxation set forth in Section 306(1)(d).

⁸ *Arizona v. Atchison, Topeka & Santa Fe Ry. Co.*, 658 F.2d 398 (9th Cir. 1981); *Alabama Great Southern R.R. v. Eagerton*, *supra*; *Ogilvie v. State Board of Equalization*, *supra*.

should not include any analysis of the impact of federal taxation on railroads and other taxpayers. (App. 16.) The Iowa Supreme Court thus properly framed its analysis of the discriminatory impact of the particular state tax in question in terms of determining a relevant class of other comparable taxpayers and comparable taxes imposed—or, in this case, not imposed—by Iowa on such other taxpayers. Under the unique and limited circumstances of this case (which involves an excise tax on fuel consumed in the propulsion of railroad vehicles in Iowa), the Iowa Supreme Court then compared this tax with fuel consumption taxes imposed by Iowa on competing modes of transportation in Iowa.⁹ The Iowa Supreme Court then analyzed the relevant Iowa tax provisions and concluded that Iowa did not impose any comparable tax on competing modes of transportation and that the excise tax on railroads therefore was discriminatory. (App. 16-20)¹⁰ Certainly, the Iowa Supreme Court

⁹ Indeed, in their Brief in the Iowa Supreme Court (pp. 22 and 24), the Petitioners urged the Iowa Supreme Court to compare the fuel consumption tax on railroads with the taxation of "other [competing] transportation modes".

¹⁰ The Iowa Supreme Court specifically reviewed the Iowa taxation of fuel consumption by railroads, trucks, barges and aircraft. The Court found that the only tax which Iowa exerts regarding railroad fuel is the tax at issue in this case, and that barges (which constitute a substantial and competitive transportation mode) and aircraft are not required to pay any Iowa taxes on fuel consumption within Iowa. The Court also noted that while trucks superficially appear to pay a higher per gallon tax on fuel consumed in Iowa, the Iowa Constitution requires that Iowa taxes on truck fuel consumption be paid to an earmarked highway fund and thus merely represent the portion of the cost of the highways that the Iowa legislature deemed that the trucks should bear. In contrast, the Court found that railroads must acquire, construct, maintain and pay Iowa taxes on their own tracks and rights-of-way. The Iowa Supreme Court therefore found that, comparing state fuel taxation of railroads and trucks, the railroad tax in question results in discriminatory treatment of the railroads. (App. 16-20.)

is particularly well-qualified to interpret the taxing structure of the State of Iowa and its findings as to the incidence and effect of Iowa taxes are entitled to great weight; indeed, if, as here, the Iowa Supreme Court's findings are consistent with a reasonable interpretation of the Iowa statutes, this Court has indicated that such findings will be deemed conclusive. *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975).

II. This Case Does Not Involve Any Significant Interpretation of Federal Law or Any Important Question of Broad Applicability

Petitioners paint this case as involving broad interpretations of Section 306(1)(d) which threaten the revenue systems of many states and the very foundation of federalism (Petition 6-7) and which assertedly impinge upon the ability of the states to impose "nondiscriminatory" taxes upon rail carriers for the purpose of promoting rail transportation within the states (Petition 8-9). The Petitioners thus attempt to cast this case as presenting important questions of federal law which should be settled by this Court. Petitioners' characterization of this case is so exaggerated as to be ludicrous.

The decision of the Iowa Supreme Court involves no more than an application of the clear and unambiguous anti-discrimination provisions of Section 306(1)(d) of the 4-R Act as applied to a unique¹¹ state excise tax which results in discriminatory treatment of railroads in the narrow context of the particular tax structure of the State of Iowa. This case does not in any manner threaten or impinge upon the rights or abilities of the states to impose reasonable and nondiscriminatory taxes.

¹¹ To the best of Respondents' knowledge, no state other than Iowa imposes an excise tax on the consumption of diesel fuel by railroads.

Moreover, Section 306(1)(d) is clearly a "catch-all" provision which encompasses a variety of present or potential forms of state taxation and thus Section 306(1)(d) essentially will have to be interpreted on a case-by-case basis depending upon the specific nature of the state tax in question and the peculiar tax structure of the particular state involved.¹² A decision by this Court with respect to the issue presented herein will not provide any broad or significant guidance and does not involve any important question of federal law.

Petitioners assert that the fact that the Iowa Supreme Court viewed the railroads as having been placed in a "competitive disadvantage" by the fuel excise tax as compared with other modes of transportation rises to the status of a "test" which has "far-reaching ramifications". (Petition 7.) Clearly, such determination by the Iowa Supreme Court does not have any such earth-shaking effect; indeed, in the context of the Iowa Supreme Court's analysis, the use of the phrase "competitive disadvantage" does no more than reflect the Court's determination that discrimination exists in a commercial sense.

Petitioners request advance legislative guidance from this Court as to the proper class of taxpayers with which

¹² Indeed, the other cases which thus far have involved the application of Section 306(1)(d) to particular state taxes reflect the variety and uniqueness of the discrimination issues to which Section 306(1)(d) is applied. In *Alabama Great Southern R.R. v. Eagerton*, *supra*, the Court of Appeals for the Eleventh Circuit invalidated a discriminatory Alabama license tax and in *Ogilvie v. State Board of Equalization*, *supra*, the Court of Appeals for the Eighth Circuit invalidated a discriminatory North Dakota personal property ad valorem tax. This case, in turn, involves the first and only state excise tax on the consumption of diesel fuel by railroads. Each case involves not only a different type of tax, but the analysis of different state statutory and tax structures.

to compare rail carriers to determine if a particular form of state taxation is discriminatory under Section 306(1)(d). (Petition 7.) Section 306(1)(d) does not prescribe a specific comparison class because Congress intended to preclude, by enacting Section 306(1)(d), all forms of discriminatory state taxation and Congress could not pre-determine every form of discriminatory taxation which might be enacted by imaginative state legislatures. Respondents respectfully suggest that this Court would similarly be hard put to provide any meaningful broad-based guidance as to specific comparison classes, at least until enough cases have arisen so that some pattern or general problems are discernable. Furthermore, this Court does not sit, as requested by Petitioners, for the purpose of providing advisory opinions to state legislatures with respect to narrow or unique forms of state taxes which they might some day wish to enact or to clarify congressional intent in the abstract.

Petitioners also assert (Petition 8) that the Iowa Supreme Court's interpretation of Section 306 will erode the ability of the states to enact non-discriminatory state taxes upon rail carriers to be expended for the promotion of rail transportation within the states. Such assertion totally misses the question presented in this case. The Respondent railroads do not challenge the right of the State of Iowa to impose reasonable and non-discriminatory taxes. Nor do the railroads, insofar as this case involves the application of Section 306(1)(d), contest or question the use of tax funds by the State of Iowa. The essence of this case, insofar as Section 306(1)(d) is concerned, is that Congress has forbidden the states from enacting any *discriminatory* state tax against railroads; the Respondent railroads' complaint herein is that the Iowa excise tax at issue is dis-

crimatory and thus prohibited by Section 306(1)(d), and the Iowa Supreme Court agreed. This is the sole and limited issue in this case at this point. The Petitioners' concern about the right of the State of Iowa to impose non-discriminatory taxes begs the question and is irrelevant.

Finally, the Petitioners ask this Court to resolve certain questions under the Commerce and Supremacy Clauses of the United States Constitution concerning the taxation of fuel. (Petition 9-10). The Respondent railroads respectfully submit that these constitutional issues are entirely premature and are not questions for review at this point. While the railroads presented certain federal constitutional questions as alternative issues before the Iowa Supreme Court, such Court, pursuant to elementary rules of appellate procedure, resolved this case on narrower statutory grounds, and expressly did not rule upon any of the constitutional issues raised by the Respondent railroads.¹² (App. 20.)

¹² Petitioners urge that review be granted for the purpose of expressly overruling *Helson v. Kentucky*, 279 U.S. 245 (1929), whose "vitality" Petitioners regard as "doubtful in light of this Court's landmark holding in *Complete Auto Transit, [Inc.] v. Brady*, 430 U.S. 474 (1977)." (Petition 9.) Respondents note that this Court's decision in *Complete Auto Transit, Inc.* has been applied in several decisions of this Court and Respondents respectfully submit that it is unnecessary for this Court to use this case as a vehicle to overrule *Helson*. Similarly, contrary to Petitioners urging (Petition 9-10), it is wholly unnecessary and, indeed, premature for this Court to use this case as a means of examining potential Supremacy Clause conflicts between "innovative" state-sponsored rail programs and the series of railroad regulatory reform acts adopted by Congress over the past several years.

CONCLUSION

The Petition does not present any ground for granting certiorari within Rule 17 of the Rules of this Court, and the Petition should therefore be denied.

Respectfully submitted,

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Dated: February 2, 1984.

APPENDIX I

Pursuant To Rule 28.1 Of The Revised Rules Of The United States Supreme Court, A List Of Parent, Subsidiaries (Other Than Wholly Owned) And Affiliated Companies Of Each Respondent Is Set Forth Below:

The Atchison, Topeka and Santa Fe Railway Company is a wholly owned subsidiary of Santa Fe Industries, Inc. which in turn is the wholly owned subsidiary of Santa Fe Southern Pacific Corporation. Its subsidiaries which are not wholly owned are:

Alameda Belt Line
The Belt Railway Company of Chicago
Central California Traction Company
The Denver Union Terminal Railway Company
Houston Belt & Terminal Railway Company
Joliet Union Depot Company
Kansas City Terminal Railway Company
The Oakland Terminal Railway
Oklahoma City Junction Railway Company
The Pueblo Union Depot and Railroad Company
St. Joseph Terminal Railroad Company
San Diego Pipeline Company
Sunset Railway Company
Texas City Terminal Railway Company
Trailer Train Company
The Wichita Union Terminal Railway Company

Its affiliates are:

Advertising Direction, Inc.
The Alton & Southern Ry. Co.
Arkansas & Memphis Railway Bridge and
Terminal Company
Asociadas Internacionales Des Pacifico
The Atchison, Topeka and Santa Fe Railway Co.
B & C General Agency, Inc.
BLC Corporation
BLFC Securities Corporation

Bankers Leasing and Financial Corporation
Bankers Leasing Corporation
Black Mesa Pipeline, Inc.
Bravo Oil Company
Canton Street Properties, Inc.
Chula Vista Bayfront Investment Co.
Clinton & Okla. Western Commeiro Leasing, Inc.
Commonwealth Control, Inc.
The Commonwealth Plan, Inc.
The Commonwealth Plan of Puerto Rico, Inc.
The Commonwealth System, Inc.
Dallas Terminal Ry. and Union Depot Co.
Dodge City and Cimarron Valley
Evergreen Leasing Corporation
Financial Leasing Corporation
Fresno Interurban Railway Company
Gallo Wash Coal Company
Garden City Gulf & Northern Railroad Company
Glascar, Inc.
Golden Empire Investment Corporation
Gulf Central Pipeline Co.
Gulf Cent. Strg. & Terminal Co.
Gulf Cent. Strg. & Term. Company of Neb.
Gulf & Inter-State Railway Company of Texas
Haystack Mt. Development Co.
Louis Heller, Incorporated
Holton Inter-Urban Railway Company
Hospah Coal Company
Kansas Southwestern Railway Company
Kirby Forest Industries, Inc.
Lease Capital, Inc.
Los Alamos Constructors
Los Angeles Junction
Los Angeles Union Terminal, Inc.
Main Street Warehouse Company
Robert E. McKee, Inc.
McKee Building Services, Inc.
Mescalero Pipeline, Inc.
The Midwest Commonwealth Plan, Inc.
Northwestern Pacific Railroad Company
One Market Street Properties, Inc.

Pacific Fruit Express Company
Pacific Motor Transport Company
Pacific Motor Trucking Company
Pacific Petroleum Pipe Lines, Inc.
The Pacific Plan, Inc.
Petaluma and Santa Rosa Railroad Company
Pintada Coal Company
Rio Grande, El Paso and Santa Fe
San Diego Pipeline Co.
SF Coal Corp.
S F Energy Co. of Indonesia
S F M Nebraska, Inc.
Santa Fe Energy Co.
Santa Fe Energy Company of Seychelles, Inc.
Santa Fe Energy Products Company
Santa Fe Forwarding Co.
Santa Fe Industrial Realty Co.
Santa Fe Land Improvement Co.
Santa Fe Leasing Corp.
Santa Fe Mining, Inc.
Santa Fe Natural Resources, Inc.
Santa Fe Oil Company
Santa Fe Pacific R.R. Co.
Santa Fe Pipeline Co.
Santa Fe Pipelines, Inc.
Santa Fe Rail Equipment Co.
Santa Fe Terminal Services, Inc.
Santa Fe Towers Land Co.
Santa Fe Trail Transp. Co.
Santa Fe Transportation Co. (California)
Security Guard Service, Inc.
Sopac Finance N.Y.
Southern Pacific Air Freight, Inc.
Southern Pacific Company
Southern Pacific Development Company
Southern Pacific Equipment Company
Southern Pacific Industrial Development Company
Southern Pacific International, Inc.
Southern Pacific Land Company
Southern Pacific Marine Transport, Inc.

Southern Pacific Pipe Lines, Inc.
Southern Pacific Telecommunications
Processing Company
Southern Pacific Transportation Company
Southern Pacific Warehouse Company
Southwest Pipeline Co.
The Southwestern Town Lot Corp.
Standard Office Building Corp.
Star Lake Railroad Co.
St. Louis Southwestern Ry. Co.
St. Louis Southwestern Ry. Co. of Texas
Sun Country Const. Co.
Sunset Communications Company
Sunset Insurance Company
TICOR
Transit Ice Company
Visalia Electric Railroad
Walker-Kurth Lumber Co.
The Worcester Plan, Inc.
The Zia Company

Burlington Northern Railroad Company is a wholly owned subsidiary of Burlington Northern Inc. Its subsidiaries which are not wholly owned are:

The Belt Railway Company of Chicago
Camas Prairie Railroad Company
Chicago Union Station Company
Davenport, Rock Island and North Western Railway
Company
The Denver Union Terminal Railway Company
Galveston Terminal Railway Company
Houston Belt & Terminal Railway Company
Iowa Transfer Railway Company
Kansas City Terminal Railway Company
Keokuk Union Depot Company
The Lake Superior Terminal and Transfer Railway
Company
Longview Switching Company
The Minnesota Transfer Railway Company

Paducah & Illinois Railroad Company
Portland Terminal Railroad Company
The Pueblo Union Depot and Railroad Company
The Saint Paul Union Depot Company
Terminal Railroad Association of St. Louis
Trailer Train Company
The Wichita Union Terminal Railway Company
Winona Bridge Railway Company

Its affiliates are:

BN Financial Services Inc.
Burlington Northern Airmotive Inc.
Burlington Northern International Services Inc.
Burlington Northern Trading Company Inc.
Colt Intermodal Inc.
Glacier Park Company
Dreyer Bros., Inc.
Glacier Park Boulder Company
Glacier Park Denver Company
Tennessee Glacier Park Company
Washington Glacier Park Company
Glacier Park Liquidating Company
Meridian Land & Mineral Company
Milestone Petroleum Inc.
Butte Pipe Line Company
Northern Rockies Pipe Line Co.
Osage Milestone Petroleum Inc.
Portal Pipe Line Company
Saxony Corporation
New Mexico and Arizona Land Company
NZ Development Corporation
NZ Properties, Inc.
Plum Creek Timber Company, Inc.
R-H Holdings Corporation
The El Paso Company

Chicago and North Western Transportation Company
has the following subsidiaries which are not wholly owned:

Iowa Transfer Railway Company
Kansas City Terminal Railway Company

The Lake Superior Terminal and Transfer Company
Railway Company of the State of Wisconsin
The Minnesota Transfer Railway Company
Peoria and Pekin Union Railway Company
The Saint Paul Union Depot Company
Trailer Train Company

Illinois Central Gulf Railroad Company is a wholly owned subsidiary of IC Industries, Inc. Its subsidiaries (other than wholly owned) and affiliates are:

A. B. Estrella
Abex A/S
Abex Corporation
Abex Denison Limited
Abex Finangaria, S.r.l.
Abex Finanziaria
Abex Fluid Power Limited
Abex Ges. G.m.b.H.
Abex G.m.b.H.
Abex Industrial, S.A.
Abex Industries, A.B.
Abex Industries Ltd.
Abex Industries, S.A.
Abex International Holdings Limited
Abex International, S.A.
Abex Mead Limited
Abex Paqid Equipment S.A.
Abex Pagid Reibbelag G.m.b.H.
Ac'cent International De Mexico, S.A. De C.V.
Ac'cent International, Inc.
ACR Maine, Inc.
Almacenes Refrigerantes, S.A. De C.U.
Alton Manufacturing Company
American Brake Shoe Company
American Refrigeration Products, S.A.
Amesco Mexicana S.A.
Atherton Silencers Limited
Au Gourmet Foods De Luxe, Inc.
Basingstake Foods Limited
Belt Ry. Co.

Birmingham Exhaust Equipment Company Limited
Black Diamond, Inc.
Blanchard-Nus Limited
Bolingbrook 55 Corp.
Boston Bean Pot, Inc.
Bridgewater Machine Company
Bubble-Up Company, Inc.
Buffalo Refrigerating Company, Inc.
Butcher Boy Refrigerator Door Co.
Centigon, Inc.
Chandeysson Electric Company
Chesley Industries, Inc.
Colony Financial Corporation
Compet Corporation
Cobreq Cia. Brasileira de Equipamentos
Cornish Canners Limited
Cosmic Enterprises, Inc.
Cosmic Stores, Inc.
Cove Development Corporation
Covex S.r.L.
Cutcher Canning Co., Inc.
Cypress Bend Corporation
Dad's Root Beer Company
Denison Hydraulics Company, The
Denison Hydraulics India Limited
Denison Hydraulics, Japan Ltd.
Diablitos Mexicanos, S.A.
Diablitos Venegolanas, C.A.
Do-Ray Lamp Co. Ltd.
Environ of Inverrary, Inc.
Exhaust Specialists Limited
Frendo-Abex S.p.A.
Fren-Do Sud S.p.A.
Friend Brothers, Inc.
Frolic Homes, Inc.
Gas Welding, Inc.
Genadeo Advertising Agency, Inc.
Grupo De Frigeracion Industrial y Comercial,
S.A. de C.V.
Harry Peck & Co.

Havana Pepsi-Cola Bottling Co.
Helvetia Leasing Corporation
Helvetia Milk Condensing Company, Inc.
Helvetia Properties, Inc.
Helvetia Redevelopment Corporation
Hi-Q Products Company
Hussmann Acceptance Co.
Hussmann Acceptance Co. Canada Limited
Hussmann Corporation
Hussmann Distributing Company, Inc.
Hussmann Equipment Limited
Hussmann International Inc.
Hussmann Refrigeration Ltd.
Hussmann Store Equipment, Ltd.
Huth Manufacturing Corporation
IC Acquisition Company
IC Equipment Leasing Inc.
IC Equitus, Inc.
IC Industries, Inc.
IC Industries Finance Corporation, N.V.
IC Industries Insurance Co. Ltd.
IC Leasing, Inc.
IC Products Company
Iconic, Inc.
ICP Holding Corp.
Illinois Center Corporation
Illinois Central Export Corporation
Illinois Central Industries, Inc.
Industrias Frigorificas, S.A. de C.V.
International Parts Corporation
International Parts Manufacturing, Ltd.
International Stamping Company, Inc.
J. H. Senior and Company Limited
Jefferson SWRR Co.
Joliet Union Depot Co.
Kansas City Terminal Co.
Ken-Craft Products, Inc.
Kentuckiana Bottlers, Inc.
Kolmer Products Corporation

Krack Corporation
Krack Corporation International
Lakes Entrance Processors Pty. Limited
LaSalle Properties, Inc.
Laura Scudder's, Inc.
Le Silencieux, S. A.
Lincoln Financial, Inc.
Lloyds Abex Limited
Lloyds (Burton) Ltd.
Mayflower Products Limited
Mexican Holding Co.
Mid-America Improvement Corporation
Midas Australia Pty. Ltd.
Midas Automotive Ltd.
Midas Canada, Inc.
Midas Euro., Inc.
Midas International Corporation
Midas Muffler (Vic.) Pty., Limited
Midas Properties, Inc.
Midas Realty Corporation
Midas Realty Corporation of Canada
Midas S.A.
Midas Silencers Centres U.K. Limited
Midas Silencers Ltd.
Midas Steel Processing Services, Inc.
Midas Truck Body, Inc.
Milady Foods, Inc.
Missouri Specialty Spirits, Inc.
Muffler Corporation of America
905 Wine and Spirits, Inc.
Norris Homes, Inc.
North Carolina Corp.
Oak Village Development Corp.
Old Brazos Forge, Inc.
1, 2, 3 Auto Service GmbH
1, 2, 3 Auto Service GmbH & Co.
Paducah & Illinois RR Co.
Palmer Refrigeration Limited
Parmaco Products, Ltd.

Peoria & Pekin Union Ry. Co.
Pepsi-Cola General Bottlers, Inc.
Pet Incorporated (Delaware)
Pet Incorporated (Wyoming)
Pet International Sales, Inc.
Pet Milk Company
Petrodyne S.A.
Petsub, Inc.
Pet Warehousing Company of California
Port 400 Holding Company
Potteries Exhaust Centre Limited
Refrigeracion Frio Lux, S.A.I.
Richardson & Robbins Co.
S.A.A.teliers et Fonderies B. Piret
S&T of Mississippi, Inc.
S&T South, Inc.
St. Louis Lithographing Company
C. Shippam, Limited
Siprof S.A.
South Properties, Inc.
Southland Canning & Packing Co., Inc.
Spartanburg Dairy, Inc.
Stanray Corporation
Star Cooler Corporation
Stephen F. Whitman & Son, Inc.
Stuckey's, Inc.
Stuckey's Stores, Inc.
Sundaram-Abex Limited
Terminal RR Assn.—St. Louis
TI Midas Limited
Trailer Train Co.
Uni-Abex Alloy Products Limited
Vendome Stores, Inc.
Violet Packing Co., The
Walsall Exhaust Centre Limited
William Underwood Company
Wine & Spirits Enterprises, Inc.
Winebrenner Corporation, The
Wolverhampton Exhaust Centre Limited

Norfolk and Western Railroad Company is a wholly owned subsidiary of Norfolk Southern Corporation. Its subsidiaries which are not wholly owned are:

The Akron and Barberville Belt Railway Company
The Belt Railway Company of Chicago
Chicago and Western Indiana Railroad Company
The Cleveland Union Terminals Company
Deroco, Inc.
Des Moines Union Railway Company
Fairport, Painesville and Eastern Railway Company
Fort Wayne Union Railway Company
Fruit Growers Express Company
Green Real Estate Company
Iowa Transfer Railway Company
Kansas City Terminal Railway Company
Keokuk Union Depot Company
Norfolk and Portsmouth Belt Line Railroad Company
Peoria and Pekin Union Railway Company
Piedmont Aviation, Inc.
Pittsburgh & Cross Creek Railroad Company
Terminal Railroad Association of St. Louis
The Toledo Terminal Railroad Company
Trailer Train Company
Union Belt of Detroit
Wabash Railroad Company
The Wheeling and Lake Erie Railway Company
Winston-Salem Southbound Railway Company

Its affiliates are:

Airforce Pipeline, Inc.
The Alabama Great Southern Railroad Company
Algiers, Winslow and Western Railway Company
Arrowood-Southern Company
Arrowood Southern Executive Park, Inc.
The Atlanta and Charlotte Air Line Railway Company
Atlanta Terminal Company
Atlantic and East Carolina Railway Company
Atlantic and North Carolina Railroad Company
Augusta and Summerville Railroad Company

Beaver Street Tower Company
Birmingham Terminal Company
Blue Ridge Railway Company
Camp Lejeune Railroad Company
Carolina and Northwestern Railway Company
Central of Georgia Railroad Company
Central Transfer Railway and Storage Company
Charlotte-Southern Corporation
Chatham Terminal Company
Chattanooga Station Company
Chattanooga Terminal Railway Company
The Cincinnati, New Orleans and Texas Pacific
 Railway Company
Cincinnati Southern Railway
Citico Realty Company
Danville and Western Railway Company
Durham and South Carolina Railroad Company
Elberton Southern Railway Company
1575 Eye Street Associates (Limited Partnership)
The Georgia Midland Railway Company
The Georgia Northern Railway Company
Georgia Southern and Florida Railway Company
High Point, Randleman, Asheboro and Southern
 Railroad Company
Interstate Railroad Company
Lambert's Point Barge Company, Inc.
Lenoir Car Works
Live Oak, Perry and South Georgia Railway Company
Louisiana Southern Railway Company
Memphis and Charleston Railway Company
Mobile and Birmingham Railroad Company
NS Transportation Brokerage Corporation
The National Investment Company
New Orleans Terminal Company
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Foundation
Norfolk Southern Industrial Development Corp.
Norfolk Southern Marine Services, Inc.
The North Carolina Midland Railroad Company
The North Carolina Railroad Company

North Charleston Terminal Company
Ocean Steamship Company of Savannah
Pine Brook Center Limited (Limited Partnership)
Queen City Developers (Limited Partnership)
Richmond, Fredericksburg and Potomac Railroad
Company
Richmond-Washington Company
St. Johns River Terminal Company
700 North Fairfax Street Limited Partnership
The South Western Rail Road Company
Southern Rail Terminals, Inc.
Southern Rail Terminals of Alabama, Inc.
Southern Rail Terminals of North Carolina, Inc.
Southern Railway Company
Southern Railway-Carolina Division
Southern Region Coal Transport, Inc.
Southern Region Industrial Realty, Inc.
Southern Region Materials Supply, Inc.
Southern Region Motor Transport, Inc.
State University Railroad Company
Tennessee, Alabama & Georgia Railway Company
Tennessee Railway Company
Terminal Properties, Inc.
Terminal Railroad Association of St. Louis
Trailer Train Company
Transylvania Railroad Company
Virginia and Southwestern Railway Company
Woodstock & Blocton Railway Company
Yadkin Railroad Company

Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a wholly owned subsidiary of Chicago Milwaukee Corporation. Its subsidiaries which are not wholly owned are:

Chicago, Terre Haute and Southeastern
Railway Company
Chicago Union Station Company
Davenport Rock Island and North Western
Railway Company

Des Moines Union Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
The Minnesota Transfer Railway Company
National Railroad Passenger Corporation
Northern Tier Pipeline Company
Trailer Train Company

Its affiliates are:

Aslesen Company
Hansen Porcelain
Hi-Way Paving Company, Inc.
Southern Boiler Tank Works, Incorporated
Vulcan Hart Corporation

The Union Pacific Railroad Company is the wholly owned subsidiary of Pacific Rail Systems, Inc. which in turn is the wholly owned subsidiary of Union Pacific Corporation. Its subsidiaries (except wholly owned) and affiliates are:

Bear Creek Uranium Company
Black Butte Coal Company
Camas Prairie Railroad Company
Carbon County Coal Company
Corpus Christi Petrochemical Company
The Denver Union Terminal Railway Company
Esperanza Pipeline Company
Ferguson-Burleson County Gas Gathering System
Frontier Pipeline
Jefferson Southwestern Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
M-C Carbon Partnership
Medicine Bow Coal Company
Missouri Pacific Railroad Company
The Ogden Union Railway and Depot Company
Portland Traction Company
Portland Terminal Railroad Company

The St. Joseph and Grand Island Railway Company
Southern Illinois and Missouri Bridge Company
St. Joseph Terminal Railroad Company
Stansbury Coal Company
Stauffer Chemical Company of Wyoming
Trailer Train Company
Unita Development Company
Union Pacific Resources Ltd.
The Weatherford Mineral Wells and Northwestern
Railway Company